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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-626

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, *Petitioner,*

vs.

HAROLD G. O'BRIEN, ET AL., *Respondents.*

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, *Petitioner,*

vs.

BENJAMIN LIPSON, ET AL., *Respondents.*

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, *Petitioner,*

vs.

PATRICK E. GORMAN, ET AL., *Respondents.*

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, *Petitioner,*

vs.

GEORGE VEST, JR., ET AL., *Respondents.*

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, *Petitioner,*

vs.

J. J. O'DONNELL, ET AL., *Respondents.*

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, *Petitioner,*

vs.

EDWARD T. HANLEY, ET AL., *Respondents.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner Continental Illinois National Bank and Trust Company of Chicago respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled cases on October 11, 1974.

OPINIONS BELOW

The order of the District Court below, refusing to apply the doctrine of primary jurisdiction in these six cases, is reported at CCH Fed. Sec. L. Rept., ¶ 94,565 (May 10, 1974). The order of the Court of Appeals, dismissing the appeals from that order of the District Court on the ground that no "final" decision had yet been rendered, was not accompanied by an opinion and is not reported. Both of these orders are reproduced in the Appendix attached hereto.

JURISDICTION

The order of the Court of Appeals was entered on October 11, 1974, and this petition was filed within 90 days of that date.* The jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1254(1).

QUESTION PRESENTED

The Comptroller of the Currency, pursuant to the powers vested in him by Congress under the National Banking Act and the Financial Institutions Supervisory Act, has established a pervasive scheme of regulation governing conflicts of interest in national banks. In these cases the District Court, faced with issues pertaining to the alleged existence and illegality of such conflicts between the trust and commercial departments of petitioner Bank, and within its trust department, refused to refer such issues to the Comptroller for initial decision, or to stay judicial proceedings pending an administrative hearing before

* On November 7, 1974, the Court of Appeals denied a timely petition for rehearing regarding its October 11, 1974 order.

the Comptroller. The question is whether the District Court's refusal to refer or to stay is separate from and collateral to the merits of the cases and therefore appealable as a final order under 28 U. S. C. § 1291.

STATUTE INVOLVED

The statute involved is 28 U. S. C. § 1291, which governs appeals from the district courts to the federal courts of appeals, and which provides in pertinent part:

> "The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States. . . ."

STATEMENT OF THE CASE

Petitioner Continental Illinois National Bank and Trust Company of Chicago (hereinafter "Continental Bank" or "Petitioner") seeks review of a decision of the United States Court of Appeals for the Seventh Circuit which declined to entertain an appeal from an erroneous decision of the District Court. The District Court had determined that the Comptroller of the Currency did not have primary jurisdiction of the national bank "conflict of interest" issues raised in each of the cases here involved, and therefore held that judicial proceedings should proceed rather than be stayed pending administrative hearings before the Comptroller concerning the alleged conflict issues. The Court of Appeals decided thereafter that such determination of the District Court was "not final or otherwise appealable."

In each of the six actions instituted in the District Court below, plaintiffs-respondents (hereinafter, "plaintiffs"), suing as or on behalf of pension funds administered by the Trust Department of the Continental Bank as corporate trustee, alleged a wide variety of misconduct on the part of the trustee, including negligence and breach of duty with respect to the trusts in

question.* At the heart of each complaint, however, and indeed the foundation of the federal claim under the Securities Acts, was the allegation that the bank was guilty of an unrevealed "conflict of interest" in the administration of the funds in question simply because as trustee it had purchased for the plaintiff funds, in the open market, common stock issued by corporations having borrower relations with the Bank.**

Throughout their complaints, plaintiffs repeated the charge that Petitioner Bank had defrauded them by failure to reveal its supposed "conflict of interest." On this theory, plaintiffs sought to make the Bank a virtual insurer or guarantor of the prosperity of their trust investments.

Petitioner moved to dismiss the complaints in the District Court on the ground, *inter alia*, that the Comptroller of the Currency, under the powers and duties vested in him by Congress under the *Financial Institutions Supervisory Act* of 1966, 12 U. S. C. § 1818(b), *et seq.*, enjoyed exclusive jurisdiction

* Plaintiffs invoked the jurisdiction of the District Court below pursuant to the Securities Exchange Act of 1934, and the Securities Act of 1933, 15 U. S. C. § 78(a) *et seq.*, and § 77(a), *et seq.*, respectively. Plaintiffs placed principal reliance upon § 10(b) of the Securities Exchange Act, and S. E. C. Rule 10b-5 promulgated thereunder (17 C. F. R. 240.10b-5). Claims for alleged imprudent trust administration, ordinarily cognizable only in the state courts, were added as "pendent" to the Securities Acts claims (and, in the *Lipson* case, under diversity principles).

** It is not too much to say that if the plaintiffs' theory of "conflict of interest" in these cases should be sustained, large banks would be unable, as a practical matter, to administer trusts requiring a diversified portolio of corporate securities, despite the fact that Congress expressly has authorized national banks to carry on a trust business. A major bank would be crippled in its ability to make corporate loans if it could not lend to any entity whose securities were held in the bank's trust department. Conversely, the trust department of such a bank would be unable prudently to invest trust funds in securities of companies which were borrowers from the bank. The sweeping and injurious nature of the "conflict" theory advanced by plaintiffs, and its significance for the banking industry, are apparent when it is considered that Continental Bank, the eighth largest commercial bank in the United States, has commercial relations with a very substantial segment of the largest business cor-

with respect to such "conflict of interest" allegations. The District Court denied that motion on May 10, 1974, and at the same time ruled that the primary jurisdiction doctrine did not apply in these cases. Petitioner thereafter moved for reconsideration of the decision that the doctrine of primary jurisdiction was inapplicable. Petitioner cited legislative history indicating that Congress had delegated regulation of conflicts of interest of the kind charged in the present complaints to the appropriate banking regulator. That regulator is now the Comptroller of the Currency, who has prescribed a regulation which squarely governs conflicts of interest of the type alleged in the complaints. *See*, 12 C. F. R. § 9.12, promulgated pursuant to 12 U. S. C. § 92(a)(a) and § 92(a)(j). Moreover, the Comptroller of the Currency enjoys plenary authority to conduct hearings under the *Financial Institutions Supervisory Act* of 1966, 12 U. S. C. § 1818(b), *et seq.*, to determine whether, in the particular factual situation, a "conflict of interest" ever existed, and whether the rights and interests of trust beneficiaries were compromised thereby, and he has adopted a detailed code of evidentiary and procedural rules to govern in hearings before his

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porations in the nation. The publicly disseminated 1973 Annual Report of Continental Illinois Corporation (fourth quarter, 1973), states as follows on page five: "The amount of outstanding loans in the Commercial Banking Department reached a record high of almost $5.5 billion. . . . Represented among the approximately 33,000 accounts in the department are 94 of the 100 largest U. S. corporations and 318 of the Fortune 500 list." These same large corporations, of course, are the best of the "blue-chip" companies, and a prudent trustee of large pension funds will inevitably have substantial holdings of securities issued by such companies. Nor is it tenable to maintain, as plaintiffs have urged in the District Court, that "disclosure" of the overlap is a workable requirement, since both the loan portfolio of a commercial banking operation and the investments of a large trust department are in a constant state of change. A duty of disclosure in the event of any overlap would imply a right in the trust beneficiaries to raise objections, which, considering possible difficulties and delays in prompt communication with them and indeed the difficulty of identifying many of them (such as contingent beneficiaries and remaindermen) would result in intolerable delays in the implementation of decisions on both sides of the bank.

hearing examiners. 12 C. F. R. § 19. In this regulatory context, Petitioner urged the District Court that the decisions of this Court required stay of proceedings pending administrative hearings. Petitioner cited *Ricci* v. *Chicago Mercantile Exchange*, 409 U. S. 289, 305-306 (1973) (holding that the District Court should stay proceedings to avail itself of the "aid implicit in the agency's superiority in gathering the relevant facts and in marshaling them into a meaningful pattern"), *Chicago Mercantile Exchange* v. *Deaktor*, 414 U. S. 113, 115 (1973) (holding that "the considered view of the Commission would be of sufficient aid to the Court that the action should not go forward without making reasonable efforts to invoke the jurisdiction of the Commission"), *Far East Conf.* v. *United States*, 342 U. S. 570, 574 (1952) (holding that "in cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over"), and *Tank Car Corp.* v. *Terminal Co.*, 308 U. S. 422, 433 (1940) (holding that "when it appeared in the course of the litigation that an administrative problem, committed to the Commission, was involved, the court should have stayed its hand"). Cited also was *Chambers* v. *Beatty*, 281 F. Supp. 711 (S. D. N. Y. 1968) (holding that the decisions of this Court in the field of primary jurisdiction require reference of banking issues to the banking regulatory agencies under the *Financial Institutions Supervisory Act* of 1966).

On June 10, 1974, the District Court denied the motion for reconsideration of its primary jurisdiction holding and refused to stay proceedings pending administrative hearings before the Comptroller. Notices of appeal were timely filed in all six of the above-entitled cases on July 9, 1974, seeking review of the decision of the District Court refusing to stay proceedings. Those appeals were taken pursuant to 28 U. S. C. § 1291.* On

* On July 3, 1974, the District Court had declined to certify the orders of May 10, 1974 and June 10, 1974, for interlocutory appeal pursuant to 28 U. S. C. § 1292(b).

October 11, 1974, the Court of Appeals dismissed the appeals in these six cases, stating in its order of dismissal that the decision of the District Court was "not final or otherwise appealable."*

REASONS FOR GRANTING THE WRIT

The question in these cases is whether an order of the District Court, improperly refusing to refer complex and protracted litigation to an administrative agency for preliminary determination of matters falling within the primary jurisdiction of that agency, is appealable as of right pursuant to 28 U. S. C. § 1291. This petition for certiorari should be granted to resolve the conflict between the Second and Seventh Circuit Courts of Appeals regarding that basic question, as well as between the decision below and principles long recognized by this Court.

The Seventh Circuit in the instant cases adhered to its position, taken in *Thill Securities Corp.* v. *New York Stock Exchange*, 469 F. 2d 14, 16 (7th Cir. 1972), that such orders relating to the primary jurisdiction doctrine are not appealable. This position is in conflict with the decision of the Court of Appeals for the Second Circuit in *C. A. B.* v. *Aeromatic Travel Corp.*, 489 F. 2d 251 (2nd Cir. 1974). In the *Aeromatic* case, the District Court had made an erroneous ruling respecting the necessity of referring the action before it to the Civil Aeronautics Board pursuant to the doctrine of primary jurisdiction. Despite the fact that the action was still in its preliminary stages, the Court of Appeals entertained an immediate appeal under 28 U. S. C. § 1291, saying (at page 253):

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* On November 7, 1974, the Court of Appeals denied a petition for rehearing regarding the dismissal order of October 11, 1974. The effect of the dismissal of the appeals in these cases is that once again the Seventh Circuit has refused to implement the doctrine of primary jurisdiction as set forth in the decisions of this Court. *See, e.g., Chicago Mercantile Exchange* v. *Deaktor*, 414 U. S. 113 (1973), *reversing* the decision of the Court of Appeals for the Seventh Circuit in *Deaktor* v. *L. D. Schreiber & Co.*, 479 F. 2d 529 (7th Cir. 1973).

> "We must decide whether we have jurisdiction to hear this appeal. Under the teaching of *Cohen* v. *Beneficial Loan Corp.*, 337 U. S. 541, 545-547, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949), we believe that we have jurisdiction. *The issue of whether the doctrine of primary jurisdiction should be invoked is collateral to the ultimate issues of this case, the issue is vital to CAB efforts to secure speedy enforcement of the Federal Aviation Act and the Board's regulations, and the issue is too important to be deferred until the entire case is decided.*" (Emphasis supplied.)

Although in *Aeromatic* the court had *stayed* proceedings pending administrative action, whereas the converse is the situation here (since the District Court *declined to stay* proceedings as required by the doctrine of primary jurisdiction), each case nonetheless presents the question whether the threshold determination, under the doctrine of primary jurisdiction, as to which tribunal should initially consider the controversy, is appealable because (in part) it is separate from and independent of (and therefore "collateral to") the merits of the case. In the cases here, as in the *Aeromatic* case, the primary jurisdiction issue relates only to the preliminary question of which tribunal should first consider the controversy; that issue, we submit, is clearly collateral to the merits. And here, as in the *Aeromatic* case, the erroneous decision of the District Court threatens to disrupt the "enforcement" efforts of the administrative agency empowered by Congress to exercise supervision over a regulated industry. Finally, in both instances, it is clear that the issue is "too important" to be deferred until years have passed, hundreds of thousands of dollars have been expended, and the resources of the District Court have been taxed—until all six cases here have passed through the ordeal of trial to a judgment on the merits notwithstanding the reversible error which occurred at the very outset of the litigation. Despite the identity of the issues presented, the Court of Appeals for the Seventh Circuit here refused to follow *Aeromatic*.*

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* Indeed, the October 11, 1974 decision of the Court below, dismissing the instant appeals, is also inconsistent in basic approach

The decision of the Seventh Circuit is also in conflict with the controlling interpretation of § 1291 adopted by this Court. In *Eisen* v. *Carlisle & Jacquelin* ..... U. S. ....., 94 S. Ct. 2140, 40 L. Ed. 2d 732 (1974), the Court held that a District Court order, requiring the defendant in a class action to bear the cost of notifying members of the class of the pendency of suit, was a "final" order and thus appealable as of right. Accordingly, this Court approved immediate review of a decision which unfairly burdened the defendant in forthcoming litigation, and which denied the defendant a procedural right which the law guaranteed. This Court found two pertinent criteria controlling: *first*, the fact that the District Court's order was not "tentative, informal or incomplete," and, *second*, the fact that the District Court's order was not merely a step toward resolving the controversy on the merits, but rather was a "collateral" matter, ripe for review. 94 S. Ct. 2149-2150, 40 L. Ed. 2d 745. Those criteria are satisfied here, since the District Court has definitively resolved the primary jurisdiction question raised below (erroneously, we believe), and since its threshold decision respecting the proper routing of the controversy is clearly separate from and independent of the merits of the litigation.

The holding of the Seventh Circuit that the question whether a case should be referred preliminarily to an administrative agency is not collateral to the merits of the litigation and thus not final or appealable is also in conflict with the decision of this Court in *Local No. 438 Construction & General Laborers'*

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with the decision of that same Court in *Drexler* v. *Southwest Dubois School Corporation*, ... F. 2d ....., No. 72-1918, handed down four days later, on October 15, 1974. In the *Drexler* case, the Court of Appeals for the Seventh Circuit held that an immediate appeal under 28 U. S. C. § 1291 was appropriate where the District Court had made an erroneous decision respecting the necessity of staying proceedings while the plaintiff exhausted her state court remedies. The Court of Appeals held that it is "only logical to consider this order to be a final judgment within the meaning of 28 U. S. C. § 1291. . ." Slip Opinion at page 3. This apparent inconsistency was called to the attention of the Court in a petition for rehearing but that petition was denied, without opinion, on November 7, 1974.

Union v. *Curry*, 371 U. S. 542 (1963). The *Curry* case is especially significant here because there, as in the instant cases, the order subject to appeal had erroneously determined that judicial action should *proceed* in derogation of the jurisdiction of a federal administrative agency. In *Curry*, the State Supreme Court had erroneously decided that jurisdiction should be exercised by the trial court over a controversy which fell within the exclusive jurisdiction of the National Labor Relations Board, despite the contention of defendant that exclusive jurisdiction resided in the Board. This Court subsequently held that such a decision respecting the proper routing of the controversy was a "final" decision, and thus reviewable pursuant to 28 U. S. C. § 1257. Its reasoning applied equally to the final order requirements of § 1291:

> "Whether or not the Georgia courts have power to issue an injunction is a matter wholly separate from and independent of the merits of respondents' cause. The issue on the merits, namely the legality of the union's picketing, is a matter entirely apart from the determination of whether the Georgia court or the National Labor Relations Board should conduct the trial of the issue. The jurisdictional determination here is as final and reviewable as was the District Court's decision in *Cohen* v. *Beneficial Loan Corp.*, 337 U. S. 541, exempting plaintiffs in a stockholder's suit filed in a federal court from filing a bond pursuant to a state statute. That ruling was held a final judgment under 28 U. S. C. § 1291 even though the trial in the case was still to take place." Id. at 548-549.

The fact that the *Curry* case involved a question of exclusive jurisdiction and not primary jurisdiction makes no difference, for in each situation the preliminary decision respecting proper routing of the lawsuit is "wholly separate from and independent of," and therefore collateral to, the merits of the underlying cause of action.

The decision below is also inconsistent with the approach to the question of finality which this Court has adopted in *Gillespie* v. *U. S. Steel Corp.*, 379 U. S. 148, 152-154 (1946) and

in other cases. There, the Court held that the question of "finality" must be given a "practical rather than a technical construction," especially where a decision is "fundamental" to the further conduct of the litigation, and that in cases coming within what might be called the "twilight zone" of finality *immediate review is appropriate.* The Court also held that it is necessary to consider the "costs" which are likely to result if immediate review of a threshold error is not had. *Accord: Cohen* v. *Beneficial Loan Corp.*, 337 U. S. 541, 545-47 (1949), and *Brown Shoe Co.* v. *United States,* 370 U. S. 294, 306 (1962): "A pragmatic approach to the question of finality has been considered essential to the achievement of the 'just, speedy, and inexpensive determination of every action': the touchstones of federal procedure."*

The "practical" or "pragmatic" approach to the question of finality, adopted by this Court but not by the Seventh Circuit, requires consideration of a number of pertinent factors, rather than application of technical rules or formulae. We submit that these factors are present here:

First, the order appealed from is separate from and independent of, and therefore collateral to, the merits of the controversy for it does not resolve any question on the merits and indeed is unrelated to the merits. The Court of Appeals will be in no better position to resolve the primary jurisdiction question after a trial on the merits than it is now. It is clear that the Court of Appeals can now effectively review the threshold

* In this regard, *see also, Mercantile National Bank* v. *Langdeau,* 371 U. S. 555, 558 (1963), emphasizing the need to correct threshold decisions regarding the proper routing of litigation by immediate review: "Moreover, we believe that it serves the policy underlying the requirement of finality in 28 U. S. C. § 1257 to determine now in which state court appellants may be tried rather than to subject them, and appellee, to long and complex litigation which may all be for naught if consideration of the preliminary question of venue is postponed until the conclusion of the proceedings." This analysis of "finality" under 28 U. S. C. § 1257 also applies to the question of "finality" under 28 U. S. C. § 1291. *See* the quotation from the *Curry* case on page 10 above.

jurisdictional question raised. *C. A. B.* v. *Aeromatic Travel Corp.*, 489 F. 2d 251, 253 (2nd Cir. 1974). *Local No. 438 Construction & General Laborers' Union* v. *Curry*, 371 U. S. 542, 543-550 (1963).

Second, the decision of the District Court is not "tentative," "informal," or "incomplete;" it is sufficiently settled or conclusive to admit of review. *See Eisen* v. *Carlisle & Jacquelin*, ... U. S. ....., 94 S. Ct. 2140, 2149, 40 L. Ed. 2d 732, 745 (1974). The District Court now intends to proceed with months of discovery and six lengthy trials—notwithstanding the primary authority of the Comptroller of the Currency over the administrative issues raised.

Third, the importance of the order appealed from, and the seriousness and difficulty of the issues raised, must also be considered. *See Cohen* v. *Beneficial Loan Corp.*, 337 U. S. 541, 547 (1949). In the six cases here involved, an issue of first impression is raised. No Court has ever determined (or even been called upon to determine) whether conflict of interest allegations running to the very structure of national banks should be referred, in the first instance, to the Comptroller of the Currency who has adjudicatory powers with respect to such allegations. The importance of the matter cannot be gainsaid. The proper allocation of business within the Federal system is in doubt. The uniform scheme of bank regulation is in jeopardy since reasonable coordination between court and agency has been forsaken. What is more, the Court below has burdened itself with administrative issues which require expertise and industry experience beyond its ken.

Fourth, an additional consideration is whether or not the order appealed from is "fundamental" to further proceedings in the Court below. *See Gillespie* v. *U. S. Steel Corp.*, 379 U. S. 148, 153-154 (1964). Under the statutory scheme the District Court should take into account the opinion of the Comptroller of the Currency, rendered after a full hearing under the *Financial Institutions Supervisory Act* of 1966, 12 U. S. C. § 1818(b), *et*

seq., and made in light of his expertise in monitoring "conflicts of interest" of the kind here alleged. The failure of the District Court to stay proceedings pending an administrative hearing required by law is an error which is fundamental to further proceedings below.*

Fifth, also relevant is the measure of injury which would result to the judiciary and the parties if immediate review were denied. The injury here involved, in terms of wasted judicial resources, is immense. If the District Judge below proceeds through discovery, and six lengthy trials (some of which involve broad classes of plaintiffs under Rule 23, F. R. Civ. P.), without clarification of a jurisdictional uncertainty, raised *in limine* and which bears with it the clear potential for reversal after trial on the merits, it is plain that an enormous sacrifice of judicial time and energy is threatened.** The cost to the parties here involved

* Since the issue of primary jurisdiction is "fundamental" to further court proceedings, and since the issue is surrounded with considerable difficulty, it is surprising that the District Judge did not certify his ruling with respect thereto pursuant to 28 U. S. C. 1292(b), which authorizes interim appeals. The fact that the primary jurisdiction ruling could have been certified (and indeed *should* have been certified) under § 1292(b) is an additional factor in favor of appealability under 28 U. S. C. § 1291. *See Gillespie* v. *U. S. Steel Corp.*, 379 U. S. 148, 154 (1964). "It is true that if the District Judge had certified the case to the Court of Appeals under 28 U. S. C. § 1292(b) (1958 ed.), the appeal unquestionably would have been proper; in light of the circumstances we believe that the Court of Appeals properly implemented the same policy Congress sought to promote in § 1292(b) by treating this obviously marginal case as final and appealable under 28 U. S. C. § 1291 . . ." *See also, Carter* v. *American Telephone & Telegraph Co.*, 365 F. 2d 486, 489, n. 3 (5th Cir. 1966): "The interlocutory certification method has many attractions in primary jurisdiction reference situations . . ." Accordingly, the policies of Congress are furthered by allowing immediate review under § 1291 of a determination which should have been certified.

** *See Gillespie* v. *U. S. Steel Corp.*, 379 U. S. 148, 153 (1964):

> "[I]t seems clear now that the case is before us that the eventual costs, as all the parties recognize, will certainly be less if we now pass on the questions presented here rather than send the case back with those issues undecided."

[footnote continued on next page.]

is also apparent. *See Herbst* v. *International Telephone & Telegraph Corp.*, 495 F. 2d 1308, 1313 (2nd Cir. 1974): "Judicial efficiency requires that appellate review be made before the parties and district courts have spent considerable time, effort, and money, on such actions."

In summary, the various criteria applied by this Court in determining appealability under 28 U. S. C. § 1291 are satisfied in these cases. Indeed, the most pressing considerations of policy and judicial efficiency require immediate review. In these circumstances, the Court below should have entertained an immediate appeal from the refusal of the District Court to respect the primary jurisdiction of the Comptroller of the Currency.

CONCLUSION

For the reasons stated above, this Court should grant the instant petition for certiorari to resolve the conflict between the Courts of Appeals for the Second and Seventh Circuits, as well as between the decision below and principles long recognized by this Court.

Respectfully submitted,

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This philosophy should have guided the Court of Appeals below. *Accord: Mercantile Nat. Bank* v. *Langdeau*, 371 U. S. 555, 558 (1963), refusing to delay consideration of a preliminary decision where "long and complex litigation . . . may all be for naught if consideration of the preliminary question of venue is postponed until conclusion of the proceedings."